

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: HW Delivery Service, Inc.)
 Personal Property Account No. P-134829) Shelby County
 Tax years 2003, 2004)

INITIAL DECISION AND ORDER GRANTING MOTION TO DISMISS

Statement of the Case

The Shelby County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

TAX YEAR	APPRAISAL	ASSESSMENT
2003	\$69,400	\$20,820
2004	\$93,700	\$28,110

On July 31, 2006, the taxpayer filed appeals with the State Board of Equalization ("State Board"). As indicated on the appeal forms, the above assessments were not appealed to the Shelby County Board of Equalization ("county board") during its regular annual sessions.

On December 18, 2007, the undersigned administrative judge entered a NOTICE OF HEARING which contained the following admonition:

If, by the time of the hearing, the undisputed portion of the tax on the subject property has not been paid, or any delinquent taxes have accrued on the property, then the appeal may be dismissed without any further right of administrative review.¹

On January 18, 2008, counsel to the Assessor John Zelinka filed a MOTION TO DISMISS the appeals on the ground that the State Board lacks jurisdiction. The administrative judge convened a hearing of this matter, as scheduled, on January 30, 2008 in Memphis. In attendance at the hearing were the appellant Harold Walker; Mr. Zelinka; the Assessor's Audit Manager Eric Beaupre, CPA and Director of Finance Gwendolyn Cranshaw, CPA.

Findings of Fact and Conclusions of Law

The property in question is used or held for use in a small business known as "HW Delivery Systems Corp," located at 5738 Nanjeck Circle, Ste. 207, in Memphis. In 2003 and 2004, as a result of Mr. Walker's failure to file the required tangible personal property schedule by the March 1 deadline, the Assessor made "forced" assessments on this account in the amounts shown above.² In accordance with Tenn. Code Ann. section 67-5-903(c), notices of these assessments were sent to the taxpayer's mailing address of record (P.O. Box 901197,

¹ See Acts 2007, Public Chapter No. 332, section 1 (effective June 4, 2007).

²See Tenn. Code Ann. section 67-5-903.

Memphis, TN 38190) at least five days prior to the commencement of the county board's annual session. Due apparently to the press of business, Mr. Walker did not petition the county board for relief in either tax year.

A taxpayer who is aggrieved by a forced assessment has a right to review by the local and state boards of equalization; however, Tenn. Code Ann. section 67-5-1412(b)(1) provides that:

The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508.

In this instance, it is undisputed that the address to which the Assessor's office mailed the assessment change notices was correct.

Tenn. Code Ann. section 67-5-1412(e) does afford a taxpayer the opportunity for a hearing to demonstrate "reasonable cause" for failure to appeal a property assessment to the local board of equalization. But the State Board is only allowed to accept a direct appeal pursuant to that law "up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run." Public Acts of 2007, Chapter No. 133, section 1. Unfortunately, since these appeals relative to tax years 2003 and 2004 were not initiated until 2006, neither of them can be considered under the express terms of the reasonable cause statute. Hence the Assessor's motion to dismiss must be granted. See Tenn. Atty. Gen. Op. 92-62 (October 8, 1992).

Moreover, according to information obtained by the Assessor's representatives from the Shelby County Trustee's office just before the hearing, delinquent taxes had accrued on the subject account for the preceding tax year (2002). As stated in the aforementioned notice of hearing, that circumstance alone would have justified dismissal of these appeals.

Order

It is, therefore, ORDERED that these appeals be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "**must be filed within thirty (30) days from the date the initial decision is sent.**" Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the

appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8th day of February, 2008.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Harold Walker, HW Delivery Systems Corp.
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

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